IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO. 7140 OF 2004
WITH
CRIMINAL MISC. APPLICATION NO. 7142 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTIBEN RAKESHBHAI DAMIR D/O. DHARAMPAL MALHOTRA

Versus

RAKESHKUMAR AMARSINH DAMIR

Appearance:

1. Criminal Misc.Application No. 7140 of 2004
MR HN JHALA for Petitioner No. 1
MR PRANAV D MODI for Respondent No. 1
MR AMRISH K PANDYA for Respondent No. 2
MR KT DAVE APP for Respondent No. 3

2. Criminal Misc.Application No. 7142 of 2004
MR HN JHALA for Petitioner No. 1
MR PRANAV D MODI for Respondent No. 1
MR KT DAVE APP for the Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 14/10/2004

COMMON ORAL JUDGEMENT

1. Aforesaid both the applications have been filed u/s 407 of the Code of Criminal Procedure, 1973 for transfer of Criminal Case No. 222 of 2003 pending before the Court of J.M.F.C., Mansa as well as Criminal Case No.709 of 2003 pending before the J.M.F.C., Prantij to the Metropolitan Magistrate, Court No. 13, at Ahmedabad.

2. I have heard the learned advocate appearing for the applicant and learned advocates for the respondents as well as learned A.P.P. for the State.

3. Learned advocate appearing for the applicant in both the cases submitted that the husband of the present applicant - Rakeshkumar Amarsinh Damir who is the respondent No.1 in both the applications, started coaching classes in the name of the present applicant. He has submitted that none of the cheques has been signed by the present applicant but the cheque-book has been misused by the respondent no. 1 and therefore at two different places i.e. in Court of J.M.F.C., Prantij and Court of J.M.F.C., Mansa complaint u/s 138 of the Negotiable Instruments Act, 1881 have been filed, one by the respondent no.1 and another by an employee of the said coaching class. It is also submitted by the learned advocate for the applicant that the applicant is residing at Ahmedabad and she has no, personal earning. It is also pointed out by the learned advocate for the applicant that the applicant has filed complaint u/s 498A of the I.P. Code against the respondent no. 1 and no maintenance is being given to the applicant by the respondent no. 1. The applicant is residing separately along with minor son who is, at present, aged about 7 years. The applicant has also filed criminal case being Criminal Case No. 732 of 2003 which is pending before the Metropolitan Magistrate, Court No.13, at Ahmedabad and therefore it is extremely difficult and some times practically impossible for the applicant to attend the three courts at a time at different places namely, Manasa, Prantij and Ahmedabad. It is also submitted by the learned advocate for the applicant that complainants of aforesaid criminal cases are residing at Ahmedabad who have filed criminal complaints at Prantij and Mansa with a view to harass the applicant and therefore to reduce

the difficulty and for effective and efficient defence of the present applicant, aforesaid two cases may kindly be transferred to the Metropolitan Magistrate, Court No.13, Ahmedabad especially when transfer of the aforesaid two criminal cases, causes no prejudice, to the complainants as they are directly connected with Ahmedabad. The respondent no.1 who is husband of the applicant is residing at Ahmedabad and as per the knowledge of the applicant, even the employee of coaching class is also residing at Ahmedabad. According to the applicant, the complainant of Criminal Case No. 222 of 2003 is serving with Tata Constancy Services, Ahmedabad and therefore there will be no difficulty to the said complainant if the said criminal case is transferred to the Metropolitan Court No.13, Ahmedabad.

4. Learned advocates for the respondents submitted that the respondents have already engaged lawyers at Mansa Court and Prantij Court and if the cases are transferred, they will have to engage other advocates to defend the case at Court of Metropolitan Magistrate, Ahmedabad and there will be further delay in getting justice. None the less, the learned advocates for the respondents admitted that the respondent husband is residing at Ahmedabad. Learned advocate appearing for the respondent of Cri. Misc. Application No. 7140 has admitted that the respondent no. 2 is serving in Tata Constancy Services, Ahmedabad and he is daily attending his office at Ahmedabad. Learned advocate for the respondent no. 1 of Cri. Misc. Application No.7142 of 2004 has fairly admitted that the respondent No. 1 is not paying any type of maintenance to the applicant wife though she is also having custody of the child of the respondent no.1, 1 who is aged 7 years.

5. Looking to the peculiar facts and circumstances of the case coupled with the fact that there is no means of income of the applicant and also the fact that criminal case is pending before the Metropolitan Magistrate, Court No.13, Ahmedabad and the complainants who have filed criminal case at Court of J.M.F.C., Mansa and at the Court of J.M.F.C., Prantij are residing at Ahmedabad and one of them is attending his office at Ahmedabad and looking to the genuine difficulties being experienced by the applicant, both these applications are allowed and Judicial Magistrate First Class, Mansa is directed to transfer Criminal Case No. 222 of 2003 to the Metropolitan Magistrate, Court No. 13, Ahmedabad and similarly Judicial Magistrate First Class, Prantij is directed to transfer Criminal Case No. 709 of 2003 to the Metropolitan Magistrate, Court No. 13, Ahmedabad as

expeditiously as possible. The Metropolitan Magistrate, Court No.13, Ahmedabad is directed to accept the papers of aforesaid criminal cases from the respective J.M.F.C., Court at Mansa and Prantij and decide the said criminal cases along with Criminal Case No. 732 of 2003 pending before him, as expeditiously as possible in accordance with law. Rule is made absolute in both the aforesaid applications. D.S. is permitted.

(D.N. Patel, J.)

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